

House Bill 578

By: Representatives Dempsey of the 13<sup>th</sup>, Cooper of the 43<sup>rd</sup>, Oliver of the 82<sup>nd</sup>, Welch of the 110<sup>th</sup>, Fleming of the 121<sup>st</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to general provisions regarding the Department of Human Services, so as to provide for the review of certain law enforcement conviction data with regard to persons seeking to become volunteers, interns, students, or employees; to provide for related matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to general provisions regarding the Department of Human Services, is amended by revising Code Section 49-2-14, relating to record search for conviction data on prospective employees, as follows:

"49-2-14.

(a) As used in this Code section, the term 'conviction data' means a record of a finding or verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department may receive from any law enforcement agency conviction data that is relevant to a person whom the department, or its contractors, ~~or a district or county health agency~~ is considering as a final selectee for employment or to serve as a volunteer, intern, or student in a position the duties of which involve direct care, treatment, custodial responsibilities, access to confidential or legally protected systems or information, or any combination thereof for its clients or for administrative support functions. ~~The department may also receive conviction data which is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position if, in the judgment of the employer, a final employment decision regarding the selectee can only be made by a review of conviction data in relation to the particular duties of the position and the security and safety of clients, the general public,~~

~~or other employees.~~ Further, the department or any licensed child-placing agency, designated by the department to assist it in preparing studies of homes in which children in its custody may be placed, may receive from any law enforcement agency conviction data that is relevant to any adult person who resides in a home where children in the custody of the department may be placed.

(c) The department shall establish a uniform method of obtaining conviction data under subsection (a) of this Code section which shall be applicable to the department and its contractors. Such uniform method shall require the submission to the Georgia Crime Information Center of fingerprints and the records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding.

(d) All conviction data received shall be for the exclusive purpose of making employment decisions; or determining the fitness and suitability to provide services to the department or its contractors in the capacity of an employee, volunteer, intern, or student; or decisions concerning children in the custody of the department or who are the subjects of a child protective services referral, complaint, or investigation and shall be privileged and shall not be released or otherwise disclosed to any other person or agency. Immediately following the employment decisions or upon receipt of the conviction data concerning any adult person who has contact with a child who is the subject of a child protective services referral, complaint, or investigation or who resides in a home where children in the custody of the department may be placed, all such conviction data collected by the department or the licensed child-placing agency shall be maintained by the department or child-placing agency pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the unauthorized release or disclosure of any conviction data shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable.

(e) Notwithstanding the provisions of subsection (c) of this Code section, when a contractor to this department is a personal care home, the provisions of Code Sections 31-7-250 through ~~31-7-264~~ 31-7-265 shall apply.

(f) The department may promulgate written rules and regulations to implement the provisions of this Code section.

(g) The department may receive from any law enforcement agency criminal history information, including arrest and conviction data, and any and all other information which it may be provided pursuant to state or federal law which is relevant to any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or investigation to the fullest extent permissible by federal and state law, including but not limited to Public Law 92-544. The department shall establish a uniform method of obtaining criminal history information under this subsection. Such method shall require the submission to the Georgia Crime Information Center of fingerprints together with any required records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints submitted by the department to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. Such method shall also permit the submission of the names alone of such adult persons to the proper law enforcement agency when the department is considering placement of a child in exigent circumstances for a name based check of such adult person's criminal history information as maintained by the Georgia Crime Information Center and the Federal Bureau of Investigation. In such exigent circumstances, the department shall submit fingerprints of those adult persons in the placement home, together with any required records search fee, to the Federal Bureau of Investigation within 15 calendar days of the date of the name based check on that person. The fingerprints shall be forwarded to the Federal Bureau of Investigation through the Georgia Crime Information Center in accordance with Code Section 35-3-35. Following the submission of such fingerprints, the department may receive the criminal history information, including arrest and conviction data, relevant to such person. In the event that a child has been placed in exigent circumstances, a name based records search has been requested for any adult person of the placement household, and that adult refuses to provide fingerprints after being requested to do so by the department, the child shall be immediately removed from the placement household by the department, provided that the child is in the custody of the department.

(h) The department shall be authorized to conduct a name or descriptor based check of any adult person's criminal history information, including arrest and conviction data, and other information from the Georgia Crime Information Center regarding any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or

investigation without the consent of such adult person and without fingerprint comparison to the fullest extent permissible by federal and state law.

(i) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention."

## SECTION 2.

Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to general provisions regarding the Department of Human Services, is amended by revising Code Section 49-2-14, relating to record search for conviction data on prospective employees, as follows:

"49-2-14.

(a) As used in this Code section, the term 'conviction data' means a record of a finding or verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department may receive from any law enforcement agency conviction data that is relevant to a person whom the department, or its contractors, ~~or a district or county health agency~~ is considering as a final selectee for employment or to serve as a volunteer, intern, or student in a position the duties of which involve direct care, treatment, custodial responsibilities, access to confidential or legally protected systems or information, or any combination thereof for its clients or for administrative support functions. ~~The department may also receive conviction data which is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position if, in the judgment of the employer, a final employment decision regarding the selectee can only be made by a review of conviction data in relation to the particular duties of the position and the security and safety of clients, the general public, or other employees.~~ Further, the department or any licensed child-placing agency, designated by the department to assist it in preparing studies of homes in which children in its custody may be placed, may receive from any law enforcement agency conviction data that is relevant to any adult person who resides in a home where children in the custody of the department may be placed.

(c) The department shall establish a uniform method of obtaining conviction data under subsection (a) of this Code section which shall be applicable to the department and its contractors. Such uniform method shall require the submission to the Georgia Crime Information Center of fingerprints and the records search fee in accordance with Code

Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding.

(d) All conviction data received shall be for the exclusive purpose of making employment decisions; or determining the fitness and suitability to provide services to the department or its contractors in the capacity of an employee, volunteer, intern, or student; or decisions concerning children in the custody of the department or who are the subjects of a child protective services referral, complaint, or investigation and shall be privileged and shall not be released or otherwise disclosed to any other person or agency. Immediately following the employment decisions or upon receipt of the conviction data concerning any adult person who has contact with a child who is the subject of a child protective services referral, complaint, or investigation or who resides in a home where children in the custody of the department may be placed, all such conviction data collected by the department or the licensed child-placing agency shall be maintained by the department or child-placing agency pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the unauthorized release or disclosure of any conviction data shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable.

(e) Notwithstanding subsection (c) of this Code section, when a contractor to this department is a personal care home, Article 14 of Chapter 7 of Title 31 shall apply.

(f) The department may promulgate written rules and regulations to implement the provisions of this Code section.

(g) The department may receive from any law enforcement agency criminal history information, including arrest and conviction data, and any and all other information which it may be provided pursuant to state or federal law which is relevant to any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or investigation to the fullest extent permissible by federal and state law, including but not limited to Public Law 92-544. The department shall establish a uniform method of obtaining criminal history information under this subsection. Such method shall require the submission to the Georgia Crime Information Center of fingerprints together with any

required records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints submitted by the department to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. Such method shall also permit the submission of the names alone of such adult persons to the proper law enforcement agency when the department is considering placement of a child in exigent circumstances for a name based check of such adult person's criminal history information as maintained by the Georgia Crime Information Center and the Federal Bureau of Investigation. In such exigent circumstances, the department shall submit fingerprints of those adult persons in the placement home, together with any required records search fee, to the Federal Bureau of Investigation within 15 calendar days of the date of the name based check on that person. The fingerprints shall be forwarded to the Federal Bureau of Investigation through the Georgia Crime Information Center in accordance with Code Section 35-3-35. Following the submission of such fingerprints, the department may receive the criminal history information, including arrest and conviction data, relevant to such person. In the event that a child has been placed in exigent circumstances, a name based records search has been requested for any adult person of the placement household, and that adult refuses to provide fingerprints after being requested to do so by the department, the child shall be immediately removed from the placement household by the department, provided that the child is in the custody of the department.

(h) The department shall be authorized to conduct a name or descriptor based check of any adult person's criminal history information, including arrest and conviction data, and other information from the Georgia Crime Information Center regarding any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or investigation without the consent of such adult person and without fingerprint comparison to the fullest extent permissible by federal and state law.

(i) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention."

208 **SECTION 3.**

209 Section 2 of this Act shall become effective on October 1, 2019. The remaining sections of  
210 this Act shall become effective upon its approval by the Governor or upon its becoming law  
211 without such approval.

212 **SECTION 4.**

213 All laws and parts of laws in conflict with this Act are repealed.